REPORT OF ROBERT H. JACKSON, UNITED STATES REPRESENTATIVE TO THE INTERNATIONAL CONFERENCE ON MILITARY TRIALS (LONDON, 1945)

. . . In his preface to this report, Justice Jackson highlights the difficulties in reconciling the "divergence in legal concepts and traditions" among the four delegate nations. A consistent point of separation was the difference between the Soviet practice of judicial inquiry, and the Anglo-American theory of criminal trials, coupled with opposite views of the function of the judiciary. Jackson describes these discords as "stubborn and deep," noting the failure to include in the final charter the American proposal to define "aggression." There was a significant "difference of viewpoint concerning the principles of conspiracy as developed in Anglo-American law," and the most serious disagreement concerned the definition of crimes.

The charter was, however, in many respects a success. It defines three broad categories of acts as criminal—crimes against peace, war crimes, and crimes against humanity. It also "enacts the principle that individuals rather than states are responsible for criminal violations of international law and applies to such lawbreakers the principle of conspiracy by which one who joins in a common plan to commit crime becomes responsible for the acts of any other conspirator in executing the plan." The procedural provisions of the charter are significant because they "represent the first tried and successful effort by lawyers from nations having profoundly different legal systems, philosophies, and traditions to amalgamate their ideas of fair procedure so as to permit a joint inquiry of judicial character into criminal charges."

This document also includes two reports to the President of the United States submitted by Justice Jackson in June 1945 and October 1946. The 1945 report, which was widely published in the United States and throughout Europe, "was accepted by other governments as an official statement of the position of the United States and as such was placed before all of the delegations to the London Conference." In this report Jackson outlines the basic features of the plan of prosecution on which the United States was proceeding in preparing its case. The case would begin with the assumption that "an inescapable responsibility" rested on the U.S. "to conduct an inquiry, preferably in association with others, but alone if necessary, into the culpability of those whom there is a probable cause to accuse of atrocities and other crimes." A fair hearing would be conducted to determine the guilt or innocence of the accused, employing procedures not necessarily consistent with those of a trial under the U.S. system of justice. The hearings would bar "obstructive and dilatory tactics" by the defense, and would disallow the defense from arguing the doctrines that "a head of state is immune from legal liability, and that orders from an official superior protect one who obeys them. It will be noticed that the combination of these two doctrines means that nobody is responsible." The defendants would consist of a large number of persons who were in authority in the German government and the military establishment, as well as in the financial and industrial sectors, "who by all civilized standards are provable to be common criminals." Voluntary organizations such as the Gestapo, whose criminal activities

subjugated the German people and their neighbors, would be accused as well, with the intent of demonstrating "their declared and covert objectives, and methods of recruitment and effectuating their programs." The report notes that the U.S. case would need to be "factually authentic and constitute a well-documented history of" what the U.S was convinced was "a grand, concerted pattern to commit aggressions and barbarities which have shocked the world." The report enumerates the atrocities and offenses, and violations of international law, with which the top Nazi leaders and voluntary associations were being charged. The basic premise of liability would be that "all who participate in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offenses committed and responsible for the acts of each other." The United States "proposes to charge that a war of aggression is a crime, and that modern International Law has abolished the defense that those who incite or wage it are engaged in legitimate business. Thus may the forces of the law be mobilized on the side of peace."

The 1946 report to the President summarizes the judgments of the International Military Tribunal sitting at Nurnberg (Nuremberg), Germany that were rendered on September 30 and October 1, 1946. It also provides statistics regarding testimony and other evidentiary material presented at this lengthy trial, which began on November 20, 1945. The report notes the subsequent war crimes work that would be supervised by Brigadier General Telford Taylor, specifically the prosecution of "representatives of all the important segments of the Third Reich including a considerable number of industrialists and financiers, leading cabinet ministers, top SS and police officials, and militarists." The core of this report is Justice Jackson's summary of the accomplishments of the four delegate nations. He states that the Agreement negotiated and concluded by these parties "made explicit and unambiguous that to prepare, incite, or wage a war of aggression, or to conspire with others to do so, is a crime against international society, and that to persecute, oppress, or do violence to individuals or minorities on political, racial, or religious grounds in connection with such a war, or to exterminate, enslave, or deport civilian populations, is an international crime, and that for the commission of such crimes individuals are responsible." This agreement "is a basic charter in the International Law of the future. Its principles have been incorporated into a judicial precedent," because from this point forward no one would be able to "deny or fail to know that the principles on which the Nazi leaders" were adjudged to have committed capital offenses "constitute law—and law with a sanction." The Agreement is also noteworthy because it "devised a workable procedure for the trial of crimes which reconciled the basic conflicts in Anglo-American, French, and Soviet procedures." The documentation of Nazi aggressions, persecutions, and atrocities, documented from German sources "with such authenticity and in such detail," would preclude any "responsible denial of these crimes in the future." Jackson concludes by stating that the Agreement and the military tribunal together have "put International Law squarely on the side of peace as against aggressive warfare, and on the side of humanity as against persecution."